

SANTA FE ENERGY CO.

IBLA 86-1463

Decided June 21, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application W-95761.

Affirmed.

1. Administrative Practice--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Noncompetitive Leases

A simultaneous oil and gas lease application is properly rejected where the executed lease forms are not received by the proper BLM office within 30 days from receipt of the notice as required by 43 CFR 3112.6-1(a). Delivery of such documents after regular business hours on the date they were required to have been filed does not constitute compliance with the 30-day requirement in 43 CFR 3112.6-1(a) where the documents are deemed by 43 CFR 1821.2-2(d) to have been filed on the next business day.

APPEARANCES: Richard E. Frazey, Senior Landman, Denver, Colorado, for Santa Fe Energy Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Santa Fe Energy Company appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 26, 1986, rejecting its simultaneous oil and gas lease application W-95761 because appellant failed to submit the executed lease forms within the time required by 43 CFR 3112.6-1(a). Appellant was the priority applicant for parcel WY-259 in the June 1985 simultaneous oil and gas filing.

In its decision BLM stated that on May 20, 1986, it had mailed the lease agreement to appellant for execution; that the executed lease offer was due in the BLM office within 30 days from the date appellant received the lease forms; that the return receipt card showed that appellant received the lease agreement on May 24, 1986; and that the lease agreement was due in the BLM office on or before 4:30 p.m., June 23, 1986, but was not received until 9:30 a.m., on June 24, 1986. Accordingly, BLM rejected appellant's offer for noncompliance with 43 CFR 3112.6-1(a).

In its statement of reasons, appellant contends that the executed lease agreement was in fact delivered to BLM's Cheyenne, Wyoming, office

within the 30-day filing period. Appellant supports its contention as follows:

The aforementioned letter [of June 26, 1986] received from the Cheyenne, Wyoming Bureau of Land Management office stated that the return receipt card received by said office showed that [Santa Fe Energy] received the captioned lease agreement on May 24, 1986 and pursuant to regulation 43 CFR 3112.6-1(a), the signed lease agreement was due in the Cheyenne office on or before 4:30 p.m., June 23, 1986 but was not received until 9:30 a.m., June 24, 1986. However, the records of United Parcel Service, the shipper of the signed lease to the Cheyenne office, show that said lease was delivered on June 23, 1986. Attached hereto is a photocopy of United Parcel Service's tracer which includes thereon a tracing of the receiver's signature from the delivery record.

[1] 43 CFR 3112.6-1(a) provides in pertinent part: "The signed lease agreement shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease." 43 CFR 3112.5-1(c) provides that the application of the selected applicant shall be rejected if an offer is not filed in accordance with 43 CFR 3112.6-1.

The Board has consistently interpreted these, or similar regulations, as requiring rejection of any lease application or offer where the rental payment or signed lease forms have not been timely returned to BLM. See Dawson v. Andrus, 612 F.2d 1280, 1283 (10th Cir. 1980); Marion Bernice Phillips, 95 IBLA 297 (1987); David A. Gitlitz, 95 IBLA 221 (1987); F. Miles Ezell, Sr., 86 IBLA 146 (1985); P. A. Rapp, 80 IBLA 133 (1984); Eagle Basin Partnership, 76 IBLA 241 (1983); Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). BLM may not accept the forms and payment after the 30-day period because the rights of other qualified applicants have intervened. C. H. Postlewait, 83 IBLA 156 (1984); Paul C. Deters, 80 IBLA 121 (1984); Pioneer Farmout #1, Ltd., 76 IBLA 337 (1983).

Appellant has submitted copies of records of the United Parcel Service which show that the lease documents were delivered on June 23, 1986. The BLM stamp on the documents, however, shows that these forms were filed with BLM on June 24, 1986, at 9:30 a.m. Departmental regulation 43 CFR 1821.2-2(d) provides that

[a]ny document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public.

This regulation is strictly construed. If a document must be filed on a given date and it is filed after the close of business, it is not considered

timely filed. In United States v. Richard R. Ballas, 87 IBLA 88 (1985), for example, evidence of annual assessment work for a mining claim was personally delivered to the BLM office at 4:20 on the date it was required to be filed, 5 minutes after the close of business, but properly date-stamped showing it was received on the next day. See also Robert L. Wheeler, 33 IBLA 371 (1978); Bob Burch, 32 IBLA 93 (1977).

There is a legal presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976). In order to overcome the presumption of regularity, there must be some proof to the contrary. Richard A. Willers, 101 IBLA 106 (1988).

Here, the presumption is that BLM employees properly date-stamped the documents on June 24, 1986, at 9:30 a.m. because the documents were not filed before the close of business on June 23, 1986. While the evidence submitted by appellant does show there was a delivery on June 23, 1986, no time of delivery is shown. The executed lease forms were required to be filed on June 23, 1986, before the close of business if rejection of the oil and gas lease application were to be avoided. See Gordon E. Jacober, 49 IBLA 91 (1980). Appellant has submitted no evidence tending to show that the lease documents were filed before the close of business on June 23, 1986. Presumably, therefore, the lease documents were delivered after business hours on June 23, since BLM's records show this to be the case.

Since the documents were filed 1 day late, BLM properly rejected appellant's oil and gas lease application for failure to meet the 30-day time requirement of 43 CFR 3112.6-1(a). C. H. Postlewait, *supra*; see also James A. Scanapico, 76 IBLA 290 (1983). United Postal Service's failure to deliver the forms on time or to properly document their delivery information to reflect that the lease forms were timely filed cannot relieve appellant of the consequences of failure to comply with 43 CFR 3112.6-1(a). One choosing a means of delivery for a document must accept responsibility for any delay resulting from the chosen method. Eagle Basin Partnership, *supra* at 242.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

\_\_\_\_\_  
Franklin D. Arness  
Administrative Judge

We concur:

\_\_\_\_\_  
C. Randall Grant, Jr.  
Administrative Judge

\_\_\_\_\_  
R. W. Mullen  
Administrative Judge

